Office Supreme Court, U.S.
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No. 920

IN THE

Supreme Court of the United States

CITY CENTER MOTEL, INC.
Appellant,

versus

FLORIDA HOTEL AND RESTAURANT COMMISSION,
Appellee.

APPELLANT'S BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS OR AFFIRM

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I. INTRODUCTORY PARAGRAPH

The Appellant CITY CENTER MOTEL, INC. has taken an appeal to this Court from the Final Judgment of the District Court of Appeal, First District, State of Florida, reported in 134 So. 2d 856, and has filed a Statement as to Jurisdiction. The Appellee has filed a Motion to Dismiss or Affirm the Appeal and a Brief in support thereof. The Appellant files this Brief opposing the Appellee's Motion to Dismiss or Affirm.

II. ARGUMENT

The Appellee's argument is divided into five parts. We would like to answer each part.

1. Appellee contends in its Motion to Dismiss or Affirm that the decision of the District Court of Appeal, First District, State of Florida, is based on an independent non-federal question.

The validity of the statute involved, as construed, goes to the foundation of the case. The Appellant was charged with violating the statute. If the statute as construed and applied violates the Appellant's organic rights guaranteed by the federal constitution, any other non-federal questions involved are not independent but are so interwoven as not to be independent.

In this regard, the Supreme Court has stated:

> "The Court has jurisdiction to review a decision of a state court based upon a Federal and a non-Federal ground where the non-federal ground is so interwoven with the other as not to be an independent matter . . . ."
>
> *Abie State Bank v. Bryan* 282 U. S. 765, 75 L. ed. 960, 51 S. Ct. 252
>
> *Enterprise Tr. Dist. v. Farmers Mut. Canal Co.* 243 U. S. 157, 61 L. ed. 644, 37 S. Ct. 318

Appellee cited *United States v. Hastings,* 56 S. Ct. 218, 296 U. S. 188, *Herb v. Pitcairn,* 65 S. Ct. 459, 324 U. S. 117, *People ex rel Doyle v. Atwell,* 43 S. Ct. 410, 261 U. S. 590, *Bilby v. Stewart,* 38 S. Ct. 264, 246 U. S. 255, and *Municipal Securities Corp. v. Kansas City, Mo.* 38 S. Ct. 224, 246 U. S. 63.

All of these cases are authority for the principle that, as Appellee stated on page 5 of its Brief, "where it appears that notwithstanding a federal question, judgment rests on adequate non-federal grounds, and hence would not be affected by Supreme Court decision Appeal will be dismissed."

We have no quarrel with that principle, but it has no application here.

If the Supreme Court finds that the Statute as construed and as applied by Appellee deprives the Appellant of basic, fundamental rights guaranteed by the Fourteenth Amendment to the Constitution, the decision of the lower Court would be required to be reversed.

In the case cited by Appellee, it made no difference about the federal ground, because the judgment of the lower Court could be upheld on a non-federal ground whether or not the federal ground was valid. That is not the case here.

The Appellee cites *U. S. v. Hastings*, 56 S. Ct. 218. This was a criminal case in a United States District Court. The District Court sustained a demurrer to an indictment and the United States appealed under 18 USCA §682. The District Court cited a number of grounds for sustaining the demurrer, only one of which found the statute involved unconstitutional. The Supreme Court of the United States held that the demurrer was sustained on a number of grounds, several of which were non-federal. In the Hastings case it would have made no sense for the Supreme Court to take jurisdiction, because the judgment of the lower Court would not be affected by the Supreme Court's decision.

In our case the judgment of the lower Court would be vitally affected by the Supreme Court's decision.

(b) Appellee cited *Herb v. Pitcairn*, 65 S. Ct. 459. In that case the Supreme Court of the United States remanded the case to the State Court so that it could advise if its decision were on state or federal grounds.

Here again, there is no similarity. If the statute involved in this appeal is held unconstitutional, the judgment against Appellant would fall

(c) In *People ex rel Doyle v. Atwell*, 43 S. Ct. 410, the State Court in a habeas corpus proceeding decided the federal question adversely to relators but also decided that habeas corpus was not the proper remedy. The Supreme Court of the United States declined to assume jurisdiction since the judgment was based on an independent ground, as well as a federal ground and the independent ground was broad enough to sustain the judgment.

Here again, there is no similarity. If the statute involved in our case were found by the Supreme Court to be unconstitutional as construed and applied by Appellee, the judgment of the lower Court would fall.

(d) The case of *Bilby v. Stewart*, 38 S. Ct. 264 cited by Appellee, involved the denial of probate of an alleged will of a full blood Creek Indian. The Supreme Court declined to review since the federal question was of no consequence as there was adequate non-federal ground to support the denial of probate (The lower Court found lack of testamentary capacity).

Here again, there is no similarity. The judgment of the lower Court could not stand in our appeal if the Supreme Court decides the federal ground in favor of the Appellant.

(e) In the case of *Municipal Securities Corp. v. Kansas City, Mo.*, 38 S. Ct. 224, cited by Appellee, the Supreme Court found that the lower Court based its decision on a ground of general law adequate to support its finding independent of the alleged violation of the Fourteenth Amendment.

Still no similarity. A finding that the statute in our case, as construed by the Appellee is unconstitutional would necessarily void the judgment of the lower Court.

If the Appellee's construction of the statute that the said letters and figures must be the *same* size and of *equal* prominence (even though the letters and figures can all be read as far as 200 feet away and the sign tells "the whole story") and the Appellee's order that the Appellant be deprived of its valuable license to do business, are found to be violative of Appellant's rights guaranteed by the Fourteenth Amendment, the judgment of the lower Court would fall.

2. Appellee contends the decision of the lower Court did not draw in question the validity of any state statute on the ground if its being repugnant to the constitution of the United States.

Appellant's contention throughout has been that Section 509.201 (2)(a), of the Florida Statutes, as construed by the Appellant, violates the Appellant's rights guaranteed by the federal constitution.

Appellee's position is that "The Appellant's contention and the decision of the State Court below did not draw in question the validity of the statute, but rather was an interpretation of the state statute."

Appellee's position is not in harmony with the decisions of this Court.

In *Standard Oil Co. of Calif. v. Johnson* 62 S. Ct. 1161. 316 U. S. 481 the Supreme Court held that where the validity of Gen. Laws Calif. 1937 Acts 2964 Section 10 *as construed by the California Courts*, was drawn in question on ground of its being repugnant to the federal constitution, the judgment of the California Court was properly before the United States Supreme Court.

In *Ward v. Krinsky*, 42 S. Ct. 529, 259 U. S. 503, the Supreme Court concluded that although the U. S. Supreme Court is bound by the construction of a state statute by the state court of last resort it is not concluded by its reasoning but must exercise an independent judgment when called upon to determine the federal question whether the act *as construed and applied* is repugnant to the restrictions of the Federal constitution.

In *Myles Salt Co. v. Iberia & St. M. Drainage Dist.* 239 U. S. 478 the Court stated:

> "Although the state law as written is not attacked a Federal question exists where such law as administered and justiled by the state supreme court is attacked."

3. Appellee contends there is no federal question involved. Appellee argues in its brief that it was imperative that Appellant contend throughout that the statute *per se* is violative of the United States Constitution.

Appellant has contended from the outset and at every step and stage of the proceedings that the statute as construed by the Appellee is violative of Appellant's rights guaranteed it by the United States Constitution:

(a) At the close of the testimony before the commissioner, Appellant moved to dismiss the charge on the ground that the statute as construed by the Commission (now the Appellee) is violative of the Federal Constitution. (TR 9-11).

(b) In Appellant's petition for writ of certiorari (TR 14).

(c) In Appellant's brief to the District Court of Appeal (TR 14-15).

(d) In oral argument before the District Court of Appeal.

The cases hereinabove cited are authority for the proposition that a federal question is present when contention is made that the statute as construed violates the Appellant's rights guaranteed by the United State Constitution.

4. Appellee contends the cause is moot because the Appellant has complied with the order of the commission.

The cause is not moot.

The only reason Appellant paid the fine of $500 imposed by Appellee and altered its sign, is because this Honorable Court refused to grant Appellant's Motion for supersedeas.

Appellant had to comply or else its valuable license to do business would have been suspended by Appellee when the order was entered denying Appellant's Motion for supersedeas.

The issue in the case is very much alive and if Appellant wins, it wants a refund from Appellee and will reerect its sign.

The two cases cited by Appellees are certainly not authority for an argument that cause here is moot.

In *United States et al v. Alaska S. S. Co. et al* 253 U. S. 113, 40 S. Ct. 448 the question involving an appeal from order enjoining enforcement of order of Interstate Commerce Commission prescribing the terms of carrier's bill of lading, became moot where it was conceded the new Transportation Act of 1928 requires changes in the forms prescribed.

Doremus v. Board of Education 342 U. S. 429, 72 S. Ct. 394, was a suit against Board of Education for judgment declaring invalid a New Jersey statute providing for reading of Old Testament at opening of each public school day. Supreme Court held no controversy as child graduated prior to taking appeal.

5. Appellant contends the question is not substantial.

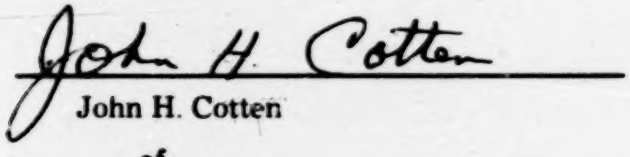
Appellant has covered this point in its Statement as to Jurisdiction, and sets forth there the substantiality of the question.

CONCLUSION

For the foregoing reasons, the Appellee's Motion to Dismiss or Affirm should be denied.

June 13, 1962

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Appellant's Brief in Opposition to Appellee's Motion to Dismiss or Affirm, has been served by mail upon Weldon G. Starry, Counsel for Appellee, 406 Midyette-Moor Building, Tallahassee, Florida, this 13 day of June, A. D. 1962.

John H. Cotten

JOHN H. COTTEN